

**DISTRICT OF COLUMBIA
DOH OFFICE OF ADJUDICATION AND HEARINGS**

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

MMM DEVELOPMENT COMPANY
Respondent

Case No.: I-02-72023

FINAL ORDER

I. Introduction

On April 4, 2002, the Government served a Notice of Infraction upon Respondent MMM Development Company, alleging that it violated 21 DCMR 700.3 by failing to containerize solid wastes properly. The Notice of Infraction alleged that the violation occurred on March 28, 2002 at 148-152 Wayne Place, S.E., and sought a fine of \$1,000.

Respondent filed a timely answer with a plea of Admit with Explanation, together with a request for suspension or reduction of the fine. The Government filed a reply on May 15, 2002.

II. Summary of the Evidence

Respondent asserts that it had hired contractors to renovate an apartment on the date of the infraction and that the contractors had removed some new appliance boxes and building materials from the apartment. Based upon conversations with the contractors, Respondent proffers an explanation of “what might have happened on the date in question.” According to Respondent, it had instructed the contractors not to place the discarded boxes and building

materials in the dumpsters to avoid filling them. It states that the contractors had placed those materials alongside a dumpster, but removed them by mid-morning, placing them on their own truck to be hauled away. Thus, according to Respondent, the materials were on the ground for no more than two hours, and they did not contain any food. Respondent also asserts that it has arranged for regular, twice-weekly trash pickups from the property, with a pickup scheduled for March 29, the day after the violation. It also asserts that its “grounds person” cleans the area of the dumpsters and the rest of the property every day, that it has contracted for regular pest control services, and that its on-site manager checks the area around the dumpsters every day.

The Government submitted copies of photographs of a dumpster at Respondent’s building taken on the date of the infraction. It asserts that “the photos will clearly show respondent was in violation of 21 DCMR 700.3 and that the respondent should be held accountable.”

III. Findings of Fact

Respondent’s plea of Admit with Explanation establishes that, on March 28, 2002, it failed to containerize solid waste at its property in a manner that did not provide food, harborage or breeding places for rodents. The photographs submitted by the Government demonstrate that on that date, at least one dumpster at Respondent’s property was uncovered and was overflowing with trash. The photographs also show that trash had been deposited on the ground next to the dumpster. The photographs show that the trash in the dumpster was ordinary household trash in plastic bags.¹ Thus, Respondent’s claim that the offending trash consisted of building materials and boxes, not food items, and that the trash was present at the property only for a few hours, is

¹ Due to the quality of the photographs, it is not possible to determine the nature of the trash on the ground.

inaccurate. The dumpster was not emptied until the scheduled pickup on the next day. Before that pickup occurred, it is likely that residents of the building put more household trash into the uncovered dumpster or on the ground next to it.

Respondent undertook some efforts to prevent violations of § 700.3 by hiring someone to clean the grounds, but those efforts were not directed at remedying the inadequate capacity of the dumpster. There is, however, no evidence in the record that Respondent has a history of prior violations.

IV. Conclusions of Law

The regulation at issue provides:

All solid wastes shall be stored and containerized for collection in a manner that will not provide food, harborage, or breeding places for insects or rodents, or create a nuisance or fire hazard.

21 DCMR 700.3.

Respondent's plea of Admit with Explanation establishes that it violated § 700.3 on March 28, 2002. The Rodent Control Act of 2000 classified a violation of § 700.3 as a Class 1 infraction, which is punishable by a fine of \$1,000 for a first offense.² 16 DCMR 3201. Respondent's incorrect explanation of the violation fails to demonstrate that it has fully accepted responsibility for the violation, which resulted from the deposit of ordinary household trash into an already-full dumpster. In light of Respondent's lack of a history of prior violations, however, the fine will be reduced to \$850. D.C. Official Code § 2-1801.03(5).

² The Rodent Control Act of 2000 is Title IX of the Fiscal Year 2001 Budget Support Act of 2000, effective October 19, 2000, D.C. Law 13-172. See 47 D.C. Reg. 8962 (November 10, 2000); 47 D.C. Reg. 6308 (August 11, 2000). Section 910(b) of that Act established new fines for violations of various rodent control measures, including § 700.3. 47 D.C. Reg. at 6339 (August 11, 2000).

V. Order

Based upon the foregoing findings of fact and conclusions of law, it is, this _____ day of _____, 2002:

ORDERED, that Respondent shall pay a total of **EIGHT HUNDRED FIFTY DOLLARS (\$850)** in accordance with the attached instructions within twenty (20) calendar days of the mailing date of this Order (15 days plus 5 days service time pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that if Respondent fails to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, interest shall accrue on the unpaid amount at the rate of 1½ % per month or portion thereof, starting from the date of this Order, pursuant to D.C. Code Official Code § 2-1802.03 (i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real and personal property owned by Respondent pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondent's business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

FILED 06/14/02

John P. Dean
Administrative Judge